

MINUTES

RULES COMMITTEE MEETING

COMMISSION FOR MH/DD/SAS

**Hilton RTP
4810 Old Page Road
Research Triangle Park, N.C. 27709**

Wednesday, January 19, 2005

Attending:

Commission/Committee Members: Floyd McCullouch, Chair, Anna Scheyett, Co-Chair, Lois Batton, Buren Harrelson, Mazie Fleetwood, Ann Forbes, Martha Martinat, Pender McElroy, Connie Mele, Ellen Russell, Tom Ryba, William Sims

Ex-Officio Members: Sally Cameron, Carol Clayton, Debra Dihoff, Bob Hedrick

Excused: Dorothy Crawford, Emily Moore, Fredrica Stell

Others: Stephanie Alexander, Cindy Kornegay, Judy Bright, Darlene Creech, Michael Lancaster, M.D., Angeline Watson, Ryan Beckwith, Eric Frazier, Chris Phillips, Diane Pomper, Glenda Stokes, Stuart Berde, John Sullivan, Robin Huffman

Handouts:

1. January 19, 2005 Rules Committee Agenda
2. October 13, 2004 Rules Committee Draft Minutes
3. Proposed language: 10A NCAC 27G .1301 Residential Treatment for Children & Adolescents Who Are Emotionally Disturbed or Who Have a Mental Illness
4. Proposed language: 10A NCAC 27G .1700 Residential Treatment for Children & Adolescents Who Are Emotionally Disturbed or Who Have a Mental Illness
5. Proposed language: 10A NCAC 27G .1900 Psychiatric Residential Treatment Facility for Children & Adolescents Who Have Mental Illness or Substance Abuse or Dependence
6. Child Residential Services Continuum
7. Proposed LME Complaint and Appeal Procedures – submitted by Christine Trottier, Carolina Legal Assistance
8. Complaint Survey Results Report
9. Updated Commission for MH/DD/SAS membership lists
10. Rule Reference Material
11. Rule Tracking Spreadsheet

Welcome, Introductions and Approval of Minutes

Chair Floyd McCullough called the meeting to order at 9:35 a.m.

A moment of silence was requested for our soldiers.

All members, staff and visitors made introductions.

The minutes of the October 13, 2004 Rules Committee meeting were unanimously approved.

Proposed Amendments/Adoptions:

- 10A NCAC 27G .1301 Residential Treatment for Children & Adolescents Who Are Emotionally Disturbed or Who Have a Mental Illness
- 10A NCAC 27G .1700 Residential Treatment for Children & Adolescents Who Are Emotionally Disturbed or Who Have a Mental Illness
- 10A NCAC 27G .1900 Psychiatric Residential Treatment Facility for Children & Adolescents Who Have Mental Illness or Substance Abuse or Dependence

Michael Lancaster, M.D., Chief of Clinical Policy for the Division of Mental Health, Developmental Disabilities, Substance Abuse Services (DMH/DD/SAS) provided an overview of child residential services in North Carolina. He emphasized that an over reliance on residential treatment had evolved, partly due to a lack of sufficient community based alternatives. He noted that the number of Level III Residential Treatments facilities had grown tremendously over the past three years. A need exists to assure that these facilities deliver high quality treatment to consumers whose medical necessity requires this level of treatment, particularly until community capacity for more community-based alternatives can be developed. He explained the child residential services treatment continuum and how collaboration and monitoring of services occurs between the Division of Social Services, the Division of Facility Services and the Department of Juvenile Justice and Delinquency Prevention.

Dr. Lancaster stated that the proposed amendment to 10A NCAC 27G .1301- Residential Treatment for Children & Adolescents Who Are Emotionally Disturbed or Who Have a Mental Illness and the proposed adoption of 10A NCAC 27G .1700 - Residential Treatment for Children & Adolescents Who Are Emotionally Disturbed or Who Have a Mental Illness and 10A NCAC 27G .1900 - Psychiatric Residential Treatment Facility for Children & Adolescents Who Have Mental Illness or Substance Abuse or Dependence were the first phase of a larger plan to strengthen the rules governing residential treatment. He explained that 10A NCAC 27G .1300, if amended as proposed, would pertain to residential treatment program facilities (Level II); 10A NCAC 27G .1700 would pertain to Level III treatment facilities; 10A NCAC 27G .1900 would pertain to Psychiatric Residential Treatment Facilities. These amendments/adoptions would be effective July 1, 2005, if approved. Dr. Lancaster stated that more changes slated to come before the Commission later in 2005 to both 10A NCAC .1300 and 10A NCAC .1700 would provide additional safeguards and higher standards for all residential treatment services. He also communicated that proposed changes to the core rules (10A NCAC 27G .0100 - .0800) would hopefully be ready for presentation to the Commission by late 2005. Changes in these core rules would affect all services.

Dr. Lancaster reviewed the rationale for the proposed amendments/adoptions, using a summary document that highlighted the major issues. The members discussed the proposals and unanimously approved the proposed rules with the following revisions:

- Distinguish between the populations to be served in 10A NCAC 27G .1300 and 10A NCAC 27G .1700. such that the more intensive level of services and supervision is reflected by population definition and need.
- 10A NCAC 27G .1702 (a) – clarify the director requirements to read that the bachelor's degree is in administration, education, social work, nursing, psychology or a related field.
- 10A NCAC 27G .1702 (b) – require at least one direct care staff member with every two children or adolescents, with no less than two staff present at all times.
- 10A NCAC 27G .1702 (c) – add the word “additional” before emergency on-call staff
- 10A NCAC 27G .1702 (f) – clarify the meaning of clinical “consultation” as opposed to clinical “supervision”
- 10A NCAC 27G .1704 (a) – change wording to: “Only admitted children or adolescents, legally responsible persons, staff; other family and friends identified in the treatment plan; and others invited or permitted by the facility director shall be permitted on the premises.
- 10A NCAC 27G .1705 (b) – clarify the venue for transfer/discharge to address the issue of timeframes, work with treatment team and collaboration with family/legally responsible person.
- 10A NCAC 27G .1900 – incorporate, where appropriate, the same changes recommended for 10A NCAC 27G .1700
- 10A NCAC 27G .1901 (e) – add wording at the end: “and other national accrediting bodies as approved by the Division.
- 10A NCAC 27G .1902 (i) – consider the requirement for twenty-four hour coverage by a registered nurse relative to required experience and also if “on-call” is allowable.

In other discussions,

- Bob Hedrick requested that the word “present” be considered in 10A NCAC 27G .1702 (d), asking if staff really need to be on site when there are no children in the facility.
- The Qualified Professional and Associate Professional definitions were discussed. Several members recommended changes be considered in these definitions. Pender McElroy referenced a letter dated October 22, 2004 from the Coalition for Persons Disabled by Mental Illness (CPDMI). The letter requested that the Commission consider revisions to 10A NCAC 27G .0104 (1) and (18), definitions for Associate Professional and Qualified Professional, respectively. Mr. McElroy requested that Jennifer Sullivan, CPDMI Chair, be included in work groups considering these definitions. During the discussion relative to Associate and Qualified Professionals, Stephanie Alexander from the Division of Facility Services clarified that the core rules (10A NCAC 27G .0203) specify that Qualified Professionals can only provide supervision in areas in which they possess professional competencies. The required qualifications of direct care staff (paraprofessionals) are contained in 10A NCAC 27G .0104 (14) and 10A NCAC 27G .0204.
- There was discussion about considering rewording 10A NCAC 27G .1703 (b) so that family involvement is not restricted solely to planning for transitioning to a less restrictive setting. Some members questioned whether this language should even be here when the larger family involvement context is contained in person centered planning.

- Carol Clayton requested that she be able to send recommendations from the Behavioral Healthcare Work Group before the Commission meeting on February 17, 2005 regarding these rules, stating she wanted to make sure that their recommendations are reflected in the proposed language. Pender McElroy requested that she do so at least two weeks prior to the February 17, 2005 Commission meeting.
- Commission members asked whether or not there are additional entities that accredit Psychiatric Residential Treatment Facilities in addition to those listed in 10A NCAC 27G .1901 (e). Dr. Lancaster responded that he did not know but that the Division would investigate this.

It was also noted that the Service Definitions and any rule changes must be considered together so that they complement one another. The various timelines, which Medicaid must observe, coupled with the Service Definitions approval by the Centers for Medicare and Medicaid (CMS) and the parallel rule-making process present challenges relative to timing and implementation. Carol Clayton noted that it was difficult to discern what information should be in rule and what should be in service definitions. Dr. Lancaster agreed and stated that it was a balancing act, which requires the judgement of those involved in the process.

Bob Hedrick commented that increased staffing requirements in residential facilities would translate to increased costs. Ann Forbes countered that the use of professional level staff should decrease costs and increase efficiencies due to the professional's ability to make timely and appropriate decisions. Tom Ryba noted that quality facilities are already staffing at the higher levels.

The effective date of the rules, if approved, will be July 1, 2005, barring any unforeseen circumstances. The Division will try to have the fiscal note available to the Commission at their February 17, 2005 meeting. Complete packets incorporating the recommended changes will be mailed to the Commission membership two weeks prior to the February 17, 2005 meeting. It was noted that there would still be an opportunity to make additional changes to the proposed rules at the February 17, 2005 Commission meeting. Approval language at the February Commission meeting would allow the proposed rule language to be published in the NC Register and would initiate the required 60 day public comment period.

Status of Grievance Procedure

Diane Pomper reported that she and Christine Trottier had not met since there was no common ground relative to Ms. Trottier's proposed "LME Compliant and Appeal Procedures." Ms. Pomper stated it was not under the Commission purview to make rules in this area. Mr. McElroy stated that this would be an agenda item at the February 17, 2005 Commission meeting and that Ms. Trottier and Ms. Pomper would be presenting.

Stuart Berde and Carol Clayton reported on a collaborative process that is occurring between county/area programs and the Division of MH/DD/SAS regarding consumer complaints.

Mr. Berde gave a brief summary of this project and informed the members about Draft Communication Bulletin #30 from Mike Moseley entitled "Policy for Consumer Complaints to Area/County Programs." The policy represents a desire to standardize the complaint process in all area/county programs. It addresses potential rights violations, denials of emergency access, complaints regarding non-emergent authorizations, complaints about administrative issues and types and quality of services. A workgroup will finalize the policy after considering all comments.

Pender McElroy stated that he was reluctant for the Commission to recommend rules regarding LME complaints and appeals since the Attorney General's office did not believe this to be an area of rule-making authority for the Commission.

Status Report on LME/Provider Rules

Dr. Lancaster reported that the proposed LME Provider rules were not ready for presentation to the Rules Committee. Many comments had been received relative to these proposed rules and there was a need to consider these comments as well as make final decisions on key issues before the rules could be finalized. A timeframe of April/May is being planned for submission of proposed LME provider rules to the Rules Committee and the full Commission.

LME Data: Appeals to Local Human Rights Committees

Due to early adjournment, this report was deferred until the February 17, 2005 Commission meeting.

Change of Date for May 2005 Commission Meeting

The members were queried about changing the May 19, 2005 Commission meeting to May 9-10, 2005. This change in schedule will allow the Division staff to reserve the Sheraton at Atlantic Beach for the May meeting. The agenda will include an educational presentation of the local mental health delivery system.

The meeting adjourned at 1:15 p.m.